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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO.       |
|--|-------------|----------------------|------------------------------|------------------------|
| 10/687,714   | 10/17/2003  | Kyle Brown           | RSW920030135US1              | 4641                   |
| 25259  | 7590        | 05/25/2010           |                              |                        |
| IBM CORPORATION<br>3039 CORNWALLIS RD.<br>DEPT. T81 / B503, PO BOX 12195<br>RESEARCH TRIANGLE PARK, NC 27709 |             |                      | EXAMINER<br>AIRAPETIAN, MILA |                        |
|  |             |                      | ART UNIT<br>3625             | PAPER NUMBER           |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* KYLE BROWN

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Appeal 2009-010099  
Application 10/687,714  
Technology Center 3600

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Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 CFR §41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on April 30, 2009. A Docketing Notice was mailed on May 18, 2009.

Claim 13 of the instant application contain functional language that may be indefinite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. *See Ex Parte Rodriguez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty. Ltd. v. It'l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008 the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at: [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf) . Thus, there is a question as to whether claim 13 and the claims which depend upon this claim, meet the requirements of being definite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

Accordingly, it is ordered that the application is remanded to the Examiner to determine if claim 13 and the claims which depend upon this claim, meet the requirements of 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/KE

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